

NOTE: The following is a draft response to a request for an advisory opinion prepared for consideration by the Citizen's Ethics Advisory Board. It does not necessarily constitute the views of the Board.

TO: Board Members

FROM: Cynthia Isales, Assistant General Counsel

RE: Draft Response to RAO # 4048

DATE: June 13, 2006

INTRODUCTION

The Citizen's Ethics Advisory Board issues this advisory opinion in response to a request submitted by Michael P. Last, Chief of Services for The Connecticut Agricultural Experiment Station. In that request, he asked (1) whether there exists a definition of the phrase "official capacity," as used in General Statutes § 1-84 (k); and (2) whether § 1-84 (k)'s prohibition on accepting fees and honoraria for activities conducted in one's official capacity supersedes a union contract clause that sanctions the acceptance of honoraria in such circumstances.

RELEVANT FACTS

The following facts, presented in the request, are relevant to this opinion. Scientists employed by The Connecticut Agricultural Experiment Station travel out-of-state to speak on their research and submit papers in their areas of expertise. They are covered by an addendum in the Engineering, Scientific and Technical (P-4) Union Contract, which provides as follows:

The station encourages its scientists to report their research outside Connecticut, too, for science advances by wide and free communications and criticism of results and conclusions. Scientists need not take vacation to report their work to technical or learned groups and may accept travel expenses and reasonable honoraria so long as the absence cannot be reasonably thought to deplete the time for research at the Station, the forum is clearly a serious one, and any exchange of money is clearly not a consultation fee.

QUESTIONS

Whether there exists a definition of the phrase "official capacity," as used in § 1-84 (k); and whether § 1-84 (k)'s prohibition on accepting fees and honoraria for activities

conducted in one's official capacity supersedes a union contract clause that sanctions the acceptance of honoraria in such circumstances.

ANALYSIS

First, under the Code of Ethics for Public Officials (Code of Ethics), a state employee or public official may not accept "a fee or honorarium for an article, appearance or speech, or for participation at an event, *in the . . . public official's or state employee's official capacity . . .*" (Emphasis added.) General Statutes § 1-84 (k). When a public official or state employee is asked to engage in such activity, "the activity shall be deemed to be in his . . . 'official capacity' if the public official's or state employee's official position or authority was a significant factor in the decision to extend the invitation." Regs., Conn. State Agencies § 1-81-22 (b). Conversely, where "(1) the [state employee or public official] can demonstrate outside academic and/or professional credentials in a particular field; and (2) there is no indication that the individual's official position was a significant, i.e., determinative factor in the decision to offer the honorarium, the activity will not be prohibited by § 1-84 (k)" Advisory Opinion No. 92-12.

As applied to the facts at hand, a scientist may not accept a honorarium for a speech or an article when it is the scientist's state position—rather than his or her expertise—that is the motivating factor behind the offer of the honorarium. If a scientist was asked to give a speech in his or her official capacity, then he or she may, nevertheless, accept payment or reimbursement for necessary expenses incurred in connection with such activity. General Statutes § 1-84 (k). Necessary expenses are limited to necessary (that is, not excessive or lavish) "travel expenses, lodging for the nights before, of and after the appearance, speech or event, meals and any related conference or seminar registration fees." General Statutes § 1-79 (q).

Second, given that there exists no exception in the Code of Ethics to § 1-84 (k)'s prohibition on accepting fees or honoraria for activities conducted in one's official capacity, it is the opinion of the Citizen's Ethics Advisory Board that the prohibition in that subsection supersedes any contract clause that sanctions the acceptance of honoraria in such circumstances.

CONCLUSION

First, the phrase "official capacity," as used in § 1-84 (k), means that the public official's or state employee's official position or authority was a significant factor in the decision to extend the invitation. Second, it is the opinion of the Citizen's Ethics Advisory Board that the prohibition in § 1-84 (k) supersedes any contract clause that sanctions the acceptance of honoraria for activities conducted in one's official capacity.